

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, N.A.,

No. C 13-1148 YGR

Plaintiff,

ORDER DENYING
MOTION TO RECUSE
(Docket No. 26)

V.

KEITH AARON VANN

Defendant.

10 This matter is currently pending before District Judge Yvonne
11 Gonzalez Rogers. On April 1, 2013, Defendant Keith Aaron Vann
12 moved to recuse Judge Gonzalez Rogers from this case. On April 3,
13 after Judge Gonzalez Rogers requested that Defendant's motion be
14 randomly reassigned, the motion was referred to the undersigned
15 judge. After considering Defendant's submission, the Court denies
16 the motion for recusal.

DISCUSSION

Defendant moves for recusal under 28 U.S.C. §§ 455 and 144. Section 455 provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Section 144 provides for recusal where a party files a "timely and sufficient affidavit" averring that the judge before whom the case is pending "has a personal bias or prejudice" either against the party or in favor of any adverse party. If a judge finds a § 144 motion timely and the affidavit legally sufficient, the judge must proceed no further and another judge must be assigned to hear the matter. 28 U.S.C. § 144; United States v. Sibla, 624 F.2d 864, 867 (9th Cir. 1980). Although Defendant's

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1 motion here does not provide a legally sufficient basis for
2 recusal, Judge Gonzalez Rogers, out of an abundance of caution,
3 requested that his motion be reassigned.

4 Defendant appears to raise three grounds for recusal, none of
5 which is availing:

6 First, he contends that Judge Gonzalez Rogers displayed a
7 "clear bias and prejudice" toward him by delaying her ruling on
8 his request for permission to file electronically in this case.
9 Affidavit of Keith Aaron Vann ¶ 20. Defendant moved for
10 permission to file electronically ten days before he moved for
11 recusal; this brief delay in ruling on his motion does not evince
12 bias. More importantly, this delay cannot support recusal because
13 "the alleged prejudice was not extrajudicial." United States v.
14 Carignan, 600 F.2d 762, 763-64 (9th Cir. 1979).

15 Second, Defendant argues that Judge Gonzalez Rogers must
16 recuse herself because she previously sat on the Alameda County
17 Superior Court, where another judge denied his motion to dismiss
18 this action before the case was removed. Defendant does not
19 assert that Judge Gonzalez Rogers -- who was no longer sitting on
20 the Alameda County Superior Court when this action was filed --
21 played any part in that decision.¹ Nor does he cite any case law
22 requiring federal judges to recuse themselves from cases heard by
23 other judges on the state courts where they sat previously. Thus,
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26 ¹ This fact distinguishes the present case from cases like Amaya v.
27 Home Ice, Fuel & Supply Co., 59 Cal. 2d 295 (1963), which Defendant
28 cites in his motion. In Amaya, a California Supreme Court justice
recused himself from hearing a case that he had previously heard and
decided while sitting as a judge on a lower court.

1 Judge Gonzalez Rogers' prior judicial service on the Alameda
2 County Superior Court does not provide a basis for recusal here.

3 Third and finally, Defendant argues that Judge Gonzalez
4 Rogers must recuse herself because, Defendant alleges, she
5 received "illegal payments" from the State of California during
6 her tenure on the Alameda County Superior Court. Mot. 7.
7 Defendant does not describe the nature of these allegedly illegal
8 payments and, in any event, has not provided any basis for these
9 allegations in the documents attached to his affidavit.
10 Accordingly, this allegation does not provide a legitimate basis
11 for recusal here.

12 CONCLUSION

13 For the reasons set forth above, Defendant's motion to recuse
14 Judge Gonzalez Rogers (Docket No. 26) is DENIED.

15 IT IS SO ORDERED.

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17 Dated: 4/8/2013


18 CLAUDIA WILKEN
19 United States District Judge

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21 cc: YGR

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